

AMENDED IN ASSEMBLY JUNE 16, 2015

SENATE BILL

No. 98

Introduced by Committee on Budget and Fiscal Review

January 9, 2015

~~An act relating to the Budget Act of 2015.~~ *An act to amend Sections 22775, 22781, 22844, 22865, 22866, and 22940 of, to add Section 22843.1 to, and to repeal Section 12439 of, the Government Code, relating to state government, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 98, as amended, Committee on Budget and Fiscal Review. ~~Budget Act of 2015.~~ *State government.*

(1) The Public Employees' Medical and Hospital Care Act (PEMHCA), which is administered by the Board of Administration of the Public Employees' Retirement System, governs the funding and provision of postemployment health care benefits for eligible retired public employees and their families. PEMHCA defines "family member" for these purposes. PEMHCA authorizes the board to contract with carriers offering health benefit plans and prohibits employees, annuitants, and their family members who are eligible for Medicare, as specified, from enrolling in a basic health benefit plan. PEMHCA requires the board to make certain notifications and reports to the Legislature in connection with health benefit plans offered pursuant to its provisions.

This bill would clarify the definition of family for the purposes of PEMHCA by specifically excluding former spouses and former domestic partners. The bill would require the employing office, as specified, of a state employee or state annuitant, pursuant to standards established

by the Department of Human Resources, to possess documentation verifying eligibility of an employee's family member prior to the enrollment of a family member in a health benefit plan and to verify continued eligibility pursuant to a specified schedule. The bill would prohibit the board from granting further exceptions to the rule against enrolling in employees, annuitants, and their family members who are eligible for Medicare, as specified, in a basic health benefit plan. The bill would revise the entities to which the board is required to provide notification of approval of proposed benefit and premium readjustments to exclude the Legislature as a whole and to instead require provision of an initial estimate of proposed changes in writing to the Joint Legislative Budget Committee, the chairpersons of the committees and subcommittees in each house of the Legislature that consider the Public Employees' Retirement System's budget and activities, the State Controller, the Director of Finance, and the Legislative Analyst. The bill would specify the latest date that this notification may take place. The bill would require the board to provide a specified, detailed report to the Legislature and the Director of Finance annually, on November 1, regarding the health benefit plans it provides.

(2) PEMHCA establishes the Annuitants' Health Care Coverage Fund, which is continuously appropriated for the purpose of prefunding of health care coverage for annuitants, including administrative costs. PEMHCA defines "prefunding" for these purposes.

This bill would prohibit the use of certain state funds in the Annuitants' Health Care Coverage Fund for the payment of benefits until the earlier of 2 specified dates. The bill would revise the definition of prefunding to include employee as well as employer payments and to provide that payments may fund the actuarially determined normal costs of postemployment health care benefits. By providing a new funding source for a continuously appropriated fund, this bill would make an appropriation.

(3) Existing law prescribes the duties of the Controller, which generally regard supervision of the fiscal concerns of the state. Existing law requires the Controller to abolish a state position that is vacant for 6 consecutive monthly pay periods on the following July 1, and permits the Director of Finance to authorize reestablishment of a position abolished pursuant to this authority under certain conditions. Among other things, existing law requires the Controller to reestablish a position abolished pursuant to this authority if the director of the

department in which that position existed prior to abolishment makes a certification by August 15, as specified.

This bill would repeal the provisions pertaining to vacant positions described above.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2015.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12439 of the Government Code is
2 repealed.

3 12439. (a) Beginning July 1, 2002, any state position that is
4 vacant for six consecutive monthly pay periods shall be abolished
5 by the Controller on the following July 1. The six consecutive
6 monthly pay periods may occur entirely within one fiscal year or
7 between two consecutive fiscal years.

8 (b) The Director of Finance may authorize the reestablishment
9 of any positions abolished pursuant to this section if one or more
10 of the following conditions existed during part or all of the six
11 consecutive monthly pay periods:

12 (1) There was a hiring freeze in effect during part or all of the
13 six consecutive pay periods.

14 (2) The department has diligently attempted to fill the position,
15 but was unable to complete all the steps necessary to fill the
16 position within six months.

17 (3) The position has been designated as a management position
18 for purposes of collective bargaining and has been held vacant
19 pending the appointment of the director, or other chief executive
20 officer, of the department as part of the transition from one
21 Governor to the succeeding Governor.

22 (4) The classification of the position is determined to be
23 hard to fill.

24 (5) Late enactment of the budget causes the department to delay
25 filling the position.

26 (c) The Controller shall reestablish any position for which the
27 director of the department in which that position existed prior to

~~abolishment certifies by August 15 that one or more of the following conditions existed during part or all of the six consecutive pay periods:~~

~~(1) The position is necessary for directly providing 24-hour care in an institution operated by the state.~~

~~(2) The position is necessary for the state to satisfy any licensing requirements adopted by a local, state, or federal licensing or other regulatory agency.~~

~~(3) The position is directly involved in services for public health, public safety, or homeland security.~~

~~(4) The position is being held vacant because the previous incumbent is eligible to exercise a mandatory right of return from a leave of absence as may be required by any provision of law including, but not limited to, leaves for industrial disability, nonindustrial disability, military service, pregnancy, childbirth, or care of a newborn infant.~~

~~(5) The position is being held vacant because the department has granted the previous incumbent a permissive leave of absence as may be authorized by any provision of law including, but not limited to, leaves for adoption of a child, education, civilian military work, or to assume a temporary assignment in another agency.~~

~~(6) Elimination of the position will directly reduce state revenues or other income by more than would be saved by elimination of the position.~~

~~(7) The position is funded entirely from moneys appropriated pursuant to Section 221 of the Food and Agricultural Code, was established with the Controller pursuant to Section 221.1 of the Food and Agricultural Code, and directly responds to unforeseen agricultural circumstances requiring the relative expertise that the position provides.~~

~~(d) Each department shall maintain for future independent audit all records on which the department relied in determining that any position or positions satisfied one or more of the criteria specified in paragraphs (1) to (6), inclusive, of subdivision (c).~~

~~(e) The only other exceptions to the abolishment required by subdivision (a) are those positions exempt from civil service or those instructional and instruction-related positions authorized for the California State University. No money appropriated by the subsequent Budget Act shall be used to pay the salary of any~~

1 otherwise authorized state position that is abolished pursuant to
2 this section.

3 (f) The Controller, no later than September 10 of each fiscal
4 year, shall furnish the Department of Finance in writing a
5 preliminary report of any authorized state positions that were
6 abolished effective on the preceeding July 1 pursuant to this section.

7 (g) The Controller, no later than October 15 of each fiscal year,
8 shall furnish the Joint Legislative Budget Committee and the
9 Department of Finance a final report on all positions that were
10 abolished effective on the preceeding July 1.

11 (h) Departments shall not execute any personnel transactions
12 for the purpose of circumventing the provisions of this section.

13 (i) Each department shall include a section discussing its
14 compliance with this section when it prepares its report pursuant
15 to Section 13405.

16 (j) As used in this section, department refers to any department,
17 agency, board, commission, or other organizational unit of state
18 government that is empowered to appoint persons to civil service
19 positions.

20 (k) This section shall become operative July 1, 2002.

21 *SEC. 2. Section 22775 of the Government Code is amended to*
22 *read:*

23 22775. "Family member" means an employee's or annuitant's
24 spouse or domestic partner and any child, including an adopted
25 child, a stepchild, or recognized natural child. The board shall, by
26 regulation, prescribe age limits and other conditions and limitations
27 pertaining to children. "Family member" does not include a former
28 spouse or former domestic partner of an employee or annuitant.

29 *SEC. 3. Section 22781 of the Government Code is amended to*
30 *read:*

31 22781. "Prefunding" means the making of periodic payments
32 by an employer or employee to partially or completely fund or
33 amortize the actuarially determined normal costs or unfunded
34 actuarial obligation of the employer for postemployment health
35 care benefits provided to annuitants and their family members.

36 *SEC. 4. Section 22843.1 is added to the Government Code, to*
37 *read:*

38 22843.1. (a) Pursuant to standards established by the
39 Department of Human Resources, the employing office of a state
40 employee or state annuitant shall possess documentation verifying

1 *eligibility of an employee's or annuitant's family member prior to*
2 *the enrollment of a family member in a health benefit plan. The*
3 *employing office shall maintain the verifying documentation in the*
4 *employee or annuitant's official personnel or member file.*

5 *(b) The employing office of the state employee or state annuitant*
6 *shall obtain verifying documentation to substantiate the continued*
7 *eligibility of family members as follows:*

8 *(1) At least once every three years for the following family*
9 *members:*

10 *(A) Spouses.*

11 *(B) Domestic partners.*

12 *(C) Children and stepchildren.*

13 *(D) Domestic partner children.*

14 *(2) At least once annually for other children for whom the state*
15 *employee or state annuitant has assumed a parent-child*
16 *relationship.*

17 *(c) For purposes of this section, the Public Employees'*
18 *Retirement System is the employing office of a state annuitant.*

19 *SEC. 5. Section 22844 of the Government Code is amended to*
20 *read:*

21 22844. (a) Employees, annuitants, and family members who
22 become eligible to enroll on or after January 1, 1985, in Part A
23 and Part B of Medicare ~~may~~ *shall* not be enrolled in a basic health
24 benefit plan. If the employee, annuitant, or family member is
25 enrolled in Part A and Part B of Medicare, he or she may enroll
26 in a Medicare health benefit plan.

27 (b) Employees, annuitants, and family members enrolled in a
28 prescription drug plan under Part D of Medicare ~~may~~ *shall* not be
29 enrolled in a board-approved health benefit plan. This subdivision
30 does not apply to an individual enrolled in a board-approved or
31 offered health benefit plan that provides a prescription drug plan
32 or qualified prescription drug coverage under Part D of Medicare
33 as part of its benefit design.

34 (c) This section does not apply to employees and family
35 members that are specifically excluded from enrollment in a
36 Medicare health benefit plan by federal law or *federal* regulation.

37 (d) *The board shall not grant any further exemptions to this*
38 *section after July 1, 2015.*

39 *SEC. 6. Section 22865 of the Government Code is amended to*
40 *read:*

~~22865. Prior~~ *Not later than 30 days prior to the approval of proposed benefits and premium readjustments authorized under Section 22864, the board shall ~~notify~~ provide an initial estimate of proposed changes and costs in writing to the Legislature, Joint Legislative Budget Committee, the chairpersons of the committees and subcommittees in each house of the Legislature that consider the Public Employees' Retirement System's budget and activities, the State Controller, the Trustees of the California State University, and the Department of Human Resources Resources, the Director of Finance, and the proposed changes in writing. Legislative Analyst.*

SEC. 7. Section 22866 of the Government Code is amended to read:

22866. (a) The board shall report to the Legislature and the Director of Finance annually, on November 1, regarding the ~~succcess or failure of each health benefit plan.~~ benefits program. The report shall include, but not be limited to, the costs to the board and to participants, the degree of satisfaction of members and annuitants with the health benefit plans and with the quality of the care provided, as determined by a representative sampling of participants, and the level of accessibility to preferred providers for rural members who do not have access to health maintenance organizations. following:

(1) General overview of the health benefits program, including, but not limited to, the following:

(A) Description of health plans and benefits provided, including essential and nonessential benefits as required by state and federal law, member expected out-of-pocket expenses, and actuarial value by metal tier as defined by the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(B) Geographic coverage.

(C) Historic enrollment information by basic and medicare plans, by state and contract agencies, by active and retired membership, and by subscriber and dependent tier.

(D) Historic expenditures by basic and medicare plans, by state and contract agencies, by active and retired membership, and by subscriber and dependent tier.

1 (2) *Reconciliation of premium increases or decreases from the*
2 *prior plan year, and the reasons for those changes.*

3 (A) *Description of benefit design and benefit changes, including*
4 *prescription drug coverage, by plan. The description shall detail*
5 *whether benefit changes were required by statutory mandate,*
6 *federal law, or an exercise of the board's discretion, the costs or*
7 *savings of the benefit change, and the impact of how the changes*
8 *fit into a broader strategy.*

9 (B) *Discussion of risk.*

10 (C) *Description of medical trend changes in aggregate service*
11 *categories for each plan. The aggregate service categories used*
12 *shall include the standard categories of information collected by*
13 *the board, consisting of the following: inpatient, emergency room,*
14 *ambulatory surgery, office, ambulatory radiology, ambulatory*
15 *lab, mental health and substance abuse, other professional,*
16 *prescriptions, and all other service categories.*

17 (D) *Reconciliation of past year premiums against actual*
18 *enrollments, revenues, and accounts receivables.*

19 (3) *Overall member health as reflected by data on chronic*
20 *conditions.*

21 (4) *The impact of federal subsidies or contributions to the health*
22 *care of members, including Medicare Part A, Part B, Part C, or*
23 *Part D, low-income subsidies, or other federal program.*

24 (5) *The cost of benefits beyond Medicare contained in the*
25 *board's Medicare supplemental plans.*

26 (6) *A description of plan quality performance and member*
27 *satisfaction, including, but not limited to, the following:*

28 (A) *The Healthcare Effectiveness Data and Information Set,*
29 *referred to as HEDIS.*

30 (B) *The Medicare star rating for Medicare supplemental plans.*

31 (C) *The degree of satisfaction of members and annuitants with*
32 *the health benefit plans and with the quality of the care provided,*
33 *to the extent the board surveys participants.*

34 (D) *The level of accessibility to preferred providers for rural*
35 *members who do not have access to health maintenance*
36 *organizations.*

37 (E) *Other applicable quality measurements collected by the*
38 *board as part of the board's health plan contracts.*

1 (7) *A description of risk assessment and risk mitigation policy*
2 *related to the board's self-funded and flex-funded plan offerings,*
3 *including, but not limited to the following:*

4 (A) *Reserve levels and their adequacy to mitigate plan risk.*

5 (B) *The expected change in reserve levels and the factors leading*
6 *to this change.*

7 (C) *Policies to reduce excess reserves or rebuild inadequate*
8 *reserves.*

9 (D) *Decisions to lower premiums with excess reserves.*

10 (E) *The use of reinsurance and other alternatives to maintaining*
11 *reserves.*

12 (8) *Description and reconciliation of administrative*
13 *expenditures, including, but not limited to, the following:*

14 (A) *Organization and staffing levels, including salaries, wages,*
15 *and benefits.*

16 (B) *Operating expenses and equipment expenditure items,*
17 *including, but not limited to, internal and external consulting and*
18 *intradepartmental transfers.*

19 (C) *Funding sources.*

20 (D) *Investment strategies, historic investment performance, and*
21 *expected investment returns of the Public Employees' Contingency*
22 *Reserve Fund and the Public Employees' Health Care Fund.*

23 (9) *Changes in strategic direction and major policy initiatives.*

24 (b) *A report submitted pursuant to subdivision (a) shall be*
25 *provided in compliance with Section 9795.*

26 SEC. 8. *Section 22940 of the Government Code is amended to*
27 *read:*

28 22940. (a) *There is in the State Treasury the Annuitants'*
29 *Health Care Coverage Fund that is a trust fund and a retirement*
30 *fund, within the meaning of Section 17 of Article XVI of the*
31 *California Constitution. Notwithstanding Subject to the limitation*
32 *provided in subdivision (b), notwithstanding Section 13340, all*
33 *moneys in the fund are continuously appropriated without regard*
34 *to fiscal years to the board for expenditure for the prefunding of*
35 *health care coverage for annuitants pursuant to this part, including*
36 *administrative costs. The board has sole and exclusive control and*
37 *power over the administration and investment of the Annuitants'*
38 *Health Care Coverage Fund and shall make investments pursuant*
39 *to Part 3 (commencing with Section 20000).*

1 **(b) (1)** *Moneys accumulated in the designated state subaccounts*
2 *of the fund, or a successor fund, that are derived from investment*
3 *income shall not be used to pay benefits for state annuitants and*
4 *dependents until the earlier of:*

5 **(A)** *With regard to a particular designated state subaccount,*
6 *the date the funded ratio of the designated state subaccount reaches*
7 *at least 100 percent as determined in that employer's*
8 *postemployment benefits actuarial valuation and then only for the*
9 *purpose of paying benefits for state annuitants and dependents*
10 *associated with that subaccount.*

11 **(B)** *July 1, 2046.*

12 **(2)** *For purposes of this subdivision, "designed state*
13 *subaccount" means a separate account maintained within the fund*
14 *to identify prefunding contributions and assets attributable to a*
15 *specified state collective bargaining unit or other state entity for*
16 *the purpose of providing benefits to state annuitants and*
17 *dependents associated with a specified collective bargaining unit*
18 *or other state entity.*

19 **(3)** *This subdivision shall not be construed as prohibiting an*
20 *alternative funding strategy agreed to in a written memorandum*
21 *of understanding.*

22 **SEC. 9.** *This act is a bill providing for appropriations related*
23 *to the Budget Bill within the meaning of subdivision (e) of Section*
24 *12 of Article IV of the California Constitution, has been identified*
25 *as related to the budget in the Budget Bill, and shall take effect*
26 *immediately.*

27 ~~**SECTION 1.** It is the intent of the Legislature to enact statutory~~
28 ~~changes relating to the Budget Act of 2015.~~